



Dispute Resolution Services

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Residential Tenancy Branch
Office of Housing and Construction Standards

DECISION

Dispute Codes CNL, FFT

Introduction

This hearing was convened by way of conference call in response to an Application for Dispute Resolution filed by the Tenant on September 3, 2018 (the “Application”). The Tenant applied to dispute a Two Month Notice to End Tenancy for Landlord’s Use of Property dated August 20, 2018 (the “Notice”). The Tenant sought reimbursement for the filing fee.

The Tenant appeared at the hearing. The Landlord appeared at the hearing with Legal Counsel and the Witness. The Witness exited the room until required.

I explained the hearing process to the parties who did not have questions when asked. The Tenant and Landlord provided affirmed testimony.

Both parties had submitted evidence prior to the hearing. I addressed service of the hearing package and evidence.

Legal Counsel for the Landlord confirmed the Landlord received the hearing package but said the Landlord did not receive the Tenant’s evidence. I advised that the only evidence submitted by the Tenant was a copy of the Notice and a Proof of Service completed by the Landlord. Legal Counsel confirmed there was no issue with this given the nature of the evidence submitted by the Tenant.

The Tenant confirmed she received a copy of the Landlord’s evidence. At first, the Tenant did not raise any issues in relation to the Landlord’s evidence. During the hearing, the Tenant said she only received the evidence September 18, 2018. I noted that this was in compliance with rule 3.15 of the Rules of Procedure which requires respondents to serve their evidence such that the applicant receives it at least seven days before the hearing.

The parties were given an opportunity to present relevant oral evidence, make relevant submissions and ask relevant questions. I have considered all documentary evidence and oral testimony of the parties. I will only refer to the evidence I find relevant in this decision.

Issues to be Decided

1. Should the Notice be cancelled?
2. If the Notice is not cancelled, is the Landlord entitled to an Order of Possession?
3. Is the Tenant entitled to reimbursement for the filing fee?

Background and Evidence

A written tenancy agreement was submitted as evidence. It is between the Landlord and a third party as the tenant. The Tenant is listed on the agreement as an occupant. The Tenant took the position that she was a tenant under the agreement from the outset in June of 1994. Legal Counsel spoke for the Landlord. She said the Tenant became a tenant when the third party moved out of the rental unit. Legal Counsel did not know when this occurred. The Tenant said this occurred in 1996.

There was no issue that there is a tenancy agreement between the Landlord and the Tenant in relation to the rental unit. Both parties agreed it is a month-to-month tenancy. Both agreed rent is \$1,117.84 per month including hydro. Both agreed rent is due on the first day of each month.

The Notice is addressed to the Tenant and refers to the rental unit. It is signed and dated August 20, 2018 by the Landlord. It has an effective date of October 31, 2018. The grounds for the Notice are that the "rental unit will be occupied by the landlord or the landlord's close family member". The Tenant took no issue with the form or content of the Notice.

Both parties agreed the Landlord served the Notice on the Tenant personally on August 20, 2018.

In relation to the grounds for the Notice, Legal Counsel for the Landlord submitted as follows. The Landlord is 66 years old and recently married. Her and her partner reside in the upper two floors of the rental property. The Tenant resides in the lower suite at the rental property. The Landlord wants to take back the suite for the use of her and her partner.

Legal Counsel further stated as follows. The Landlord and her partner are semi-retired and work at home. They need separate spaces to work. Further, the Landlord and her partner need separate bedrooms given a medical condition of the Landlord. There are only three bedrooms upstairs. The television room and dining room are not currently being used for their intended purpose given a lack of space in the house. The Landlord sews and her sewing items are currently in the same room as the television and her partner's office which is no longer workable. The Landlord has to use the dining room as her office given the lack of space. The Landlord needs to exercise due to health issues. Currently her exercise equipment is in the back unheated shed due to a lack of space for it in the house which is not ideal.

Legal Counsel further submitted as follows. The Landlord and her partner feel overcrowded and want to take back the lower suite so they have more space. The Landlord and her partner intend to use the lower suite for their home offices and the exercise equipment. The Landlord has no ulterior motive to issue the Notice. The Landlord honestly intends to use the lower suite for the purpose stated in the Notice.

The Landlord submitted evidence in relation to the health issue discussed. The Landlord submitted photos showing that her sewing items are in the same room as her partner's home office and the television. The Landlord submitted photos showing her home office set up on the dining room table. The Landlord submitted photos showing her exercise equipment in the shed.

The Tenant testified as follows. The Landlord told her she no longer wants to be a landlord. The rental property is large. The Landlord and her partner have two floors and a large space. They currently have three bedrooms and would have five bedrooms with the lower suite. She has never seen the Landlord exercising in the shed and is not sure how she could have exercised in the shed given the items stored in it.

The Tenant further testified as follows. She is 60 years old and has lived in the rental unit for 24 years. Having to move out of the rental unit would cause her hardship including financial hardship. She is out of the country in October and the Landlord knew it was an issue for her to move in October. It is difficult to find rentals in the current market.

The Tenant submitted as follows. She cannot see why the Landlord and her partner need the space in the lower suite. They have enough space in the upper part of the rental property. She does not believe the Landlord will use the lower suite for the stated purpose. She believes the Landlord will leave the space empty or re-rent it.

Analysis

The Notice was served on the Tenant August 20, 2018 and therefore the new legislation that came into force May 17, 2018 applies.

The Notice was issued under section 49(3) of the *Act*. The Tenant had 15 days from receiving the Notice to dispute it pursuant to section 49(8)(a) of the *Act*. Based on the testimony of the parties, and our records, I find the Tenant filed the Application within the 15-day time limit set out in the *Act*.

Section 49(3) of the *Act* states:

(3) A landlord who is an individual may end a tenancy in respect of a rental unit if the landlord or a close family member of the landlord intends in good faith to occupy the rental unit.

Pursuant to rule 6.6 of the Rules, the Landlord has the onus to prove the grounds for the Notice.

Legal Counsel for the Landlord submitted that the Landlord and her partner want to take back the lower suite as they need more space. The Tenant disputed that this was the reason the Landlord issued the Notice.

I accept that the Landlord and her partner want to take back the lower suite as they require more space. The Landlord's position in this regard is supported by the documentation and photos submitted.

The Tenant provided no evidence that supports her position or causes me to question the position of the Landlord as stated by Legal Counsel. I do not find the Tenant's submissions or arguments compelling. Further, the Tenant focused on how moving would cause her hardship. This is not a basis to dispute the Notice.

I accept that the Landlord and her partner intend to occupy the rental unit and am satisfied the Landlord has proven the grounds for the Notice.

I have reviewed the Notice and find it complies in form and content with section 52 of the *Act* as required by section 49(7) of the *Act*.

I find the effective date of October 31, 2018 as indicated on the Notice complies with section 49(2)(a) of the *Act* given the testimony of the parties.

I uphold the Notice and dismiss the Tenant's application to dispute the Notice.

Section 55(1) of the *Act* requires me to issue the Landlord an Order of Possession given I have upheld the Notice, dismissed the Tenant's application to dispute the Notice and found the Notice complies with section 52 of the *Act*. I grant the Landlord an Order of Possession effective October 31, 2018.

I note that the Tenant is entitled to receive the equivalent of one month's rent payable under the tenancy agreement pursuant to section 51(1) of the *Act*.

I also note that, if the Landlord does not follow through with the stated purpose of the Notice, the Tenant can apply for the equivalent of 12 month's rent payable under the tenancy agreement pursuant to section 51(2) of the *Act*.

I decline to award the Tenant reimbursement for the filing fee given she was not successful in this application.

Conclusion

The Application is dismissed without leave to re-apply.

The Landlord is granted an Order of Possession effective October 31, 2018. This Order must be served on the Tenant and, if the Tenant does not comply with this Order, it may be filed and enforced in the Supreme Court as an order of that Court.

This decision is made on authority delegated to me by the Director of the Residential Tenancy Branch under Section 9.1(1) of the *Act*.

Dated: September 28, 2018

Residential Tenancy Branch